

**\*\*\*JULY 2018\*\*\*  
UPDATES  
TO THE  
BENCHBOOK  
FOR THE  
MISSISSIPPI  
CHANCERY COURT  
JUDGES**

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**\*\*\* Please note that the *Benchbook* will be revised for  
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**Benchbook for**

**Mississippi**

**Chancery Court**

**Judges**

**2018**



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## FOREWORD

The *Benchbook for Mississippi Chancery Court Judges* is drafted in such a way as to easily facilitate the addition of new material, changes in the law, and make corrections as needed.

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<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>			
<b>Sanction</b>	<b>Court Judge</b>	<b>Conduct Warranting Sanctions</b>	<b>Citation</b>
Removal, fine, & court costs	Justice	Judge physically and verbally assaulted a mentally disabled individual.	<i>MCJP v. Weisenberger</i> , 201 So. 3d 444 (Miss. 2016).
Removal, fine, & court costs	Justice	Judge lent prestige of office to assist a friend; deprived drug-court participant of right to counsel of her choosing; kept drug-court participants in program longer than statutorily permitted; improperly enrolled participants from other jurisdictions in drug court; and deprived drug-court participants of their due process rights.	<i>MCJP v. Thompson</i> , 169 So. 3d 857 (Miss. 2015).
Removal, fine, & court costs	Youth	Judge deliberately and unlawfully incarcerated eleven citizens without affording them due process.	<i>MCJP v. Darby</i> , 143 So. 3d 564 (Miss. 2014).
Removal & court costs	Chancery	Judge pled guilty to the felony of obstruction of justice in federal court. (Judge had resigned from office at the time of the opinion).	<i>MCJP v. Walker</i> , 172 So. 3d 1165 (Miss. 2015).
Removal & court costs	Circuit	Judge pled guilty to felonies in federal court. (Judge had resigned from office at the time of the opinion).	<i>MCJP v. DeLaughter</i> , 29 So. 3d 750 (Miss. 2010).
Removal & court costs	County	Judge recused himself from a case and then continued to issue orders in the case; once a judge recuses himself/herself from a case, the judge can not take further action in the case; there was prior judicial misconduct on the part of the judge. (Judge had resigned from office at the time of the opinion).	<i>MCJP v. Osborne</i> , 16 So. 3d 16 (Miss. 2009).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Removal	Justice	Judge used his position to have charges against the judge's son dismissed. <i>MCJP v. Brown</i> , 918 So. 2d 1247 (Miss. 2005).
Removal	Justice	Judge engaged in numerous ex parte communications with litigants and allegedly made sexual advances toward several females. <i>MCJP v. Lewis</i> , 913 So. 2d 266 (Miss. 2005).
Removal	Justice	Judge accepted payments of fines payable to justice court; improperly dismissed charges; misused contempt powers (24 counts of judicial misconduct). <i>MCJP v. Willard</i> , 788 So. 2d 736 (Miss. 2001).
Removal	Chancery	Judge became involved in legal proceedings to which he would ultimately be acting as the judge. <i>MCJP v. Jenkins</i> , 725 So. 2d 162 (Miss. 1998).
Removal	Justice	Judge had 25 counts of personal and professional misconduct including ex parte communications, exhibiting a hostile demeanor towards people, failure to properly perform his duties, and claims of sexual harassment. <i>MCJP v. Spencer</i> , 725 So. 2d 171 (Miss. 1998).
Removal	Justice	Judge entered order without authority; improperly handled DUI case; accepted money without authority; executed judgment without authority; engaged in ticket fixing; engaged in ex parte communications, & obstructed the judicial process. <i>MCJP v. Dodds</i> , 680 So. 2d 180 (Miss. 1996).
Removal	Justice	Judge became socially involved with person who appeared in her court as a defendant; knew the defendant was a fugitive from another state & participated in fugitive's criminal case after extradition. <i>MCJP v. Milling</i> , 651 So. 2d 531 (Miss. 1995).
Removal	Justice	Judge engaged in ticket fixing; failed to sentence criminals in accordance with statute; dismissed misdemeanor cases not in accordance with statute; & interfered with rotation of cases assigned to other judges in an attempt to influence other judges. <i>MCJP v. Chinn</i> , 611 So. 2d 849 (Miss. 1992).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Removal	Justice	Judge allowed clerks & other officials to dismiss traffic tickets without an adjudication; failed to timely sign dockets; & dismissed traffic tickets in exchange for information on other criminal activity. <i>MCJP v. Hopkins</i> , 590 So. 2d 857 (Miss. 1991).
Removal	Justice	Judge adjudicated approximately 28 DUI convictions & 552 routine traffic convictions without reporting them to Commissioner of Public Safety. <i>In re Quick</i> , 553 So. 2d 522 (Miss. 1989).
Removal	Justice	Judge used criminal process to collect fees & fines; failed to properly account for the fines; converted the fines to his own use. <i>MCJP v. Coleman</i> , 553 So. 2d 513 (Miss. 1989).
Removal	Justice	Judge engaged in ticket fixing; summarily adjudicated criminal defendants as not guilty on basis of ex parte communications or other un-docketed reasons; submitted improperly changed court abstracts to Department of Public Safety; used official influence to seek favorable consideration by judges of other courts for tickets issued to individual defendants; & used justice court personnel & supplies to carry out this course of conduct. <i>In re Hearn</i> , 542 So. 2d 901 (Miss. 1989).
Removal	County	Judge failed to keep records & make reports; imposed excessive fines; & utilized prisoners for personal & county work. <i>In re Collins</i> , 524 So. 2d 553 (Miss. 1988).
Removal	Justice	Judge converted money which came into his hands by virtue of office to his own use & falsified court records to cover his misconduct. <i>In re Stewart</i> , 490 So. 2d 882 (Miss. 1986).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Removal	Justice	Judge received & collected criminal fines, penalties, costs & assessments on behalf of county & failed to report & pay sums over to county.  <i>In re Garner</i> , 466 So. 2d 884 (Miss. 1985) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Removal	Justice	Judge converted money from civil litigants for his own use.  <i>In re Brown</i> , 458 So. 2d 681 (Miss. 1984).
Removal	Justice	Judge committed perjury; failed to remedy deficiency in regard to issuance of garnishments; & failed to refund garnishment costs which had been deposited but as to which no garnishment had been issued.  <i>In re Anderson</i> , 451 So. 2d 232 (Miss. 1984).
Removal	Justice	Judge charged traffic violators a greater sum as a fine than that officially reported.  <i>In re Anderson</i> , 412 So. 2d 743 (Miss. 1982).
Suspension without pay, public reprimand, fine & court costs	Justice	Judge committed judicial misconduct by sentencing a defendant to the work center after the defendant had appealed his conviction to a higher court and had then paid his court fine.  <i>MCJP v. Sheffield</i> , 235 So. 3d 30 (Miss. 2017).
Suspension without pay, public reprimand, fine & court costs	Justice	Judge improperly stated to the defendant that the judge may have to use his gun on the defendant due to the defendant's habit of placing his hands in his pockets. Judge also made disparaging comments about the defendant's mother's parenting skills.  <i>MCJP v. Vess</i> , 227 So. 3d 952 (Miss. 2017).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>			
Suspension without pay, public reprimand, fine & court costs	Chancery	Judge improperly signed ex parte orders and contributed to the mismanagement of a ward's estate.	<i>MCJP v. Shoemaker</i> , 191 So. 3d 1211 (Miss. 2016).
Suspension without pay, public reprimand, fine & court costs	Chancery	Judge abused contempt powers and illegally incarcerated litigant who had appealed and paid a supersedeas bond to stay payment of court's judgment.	<i>MCJP v. Littlejohn</i> , 172 So. 3d 1157 (Miss. 2015).
Suspension without pay, public reprimand, fine & court costs	County	Judge had presided over several cases involving six minor siblings where the judge had issued a no-contact order between the father and the children; subsequently, the judge recused himself from all proceedings involving the parties; although the judge had recused himself from the proceedings and based on ex parte communications, he issued bench warrants for the arrests of the parents for contempt of court for violation of the no-contact order and ordered them held without bond.	<i>MCJP v. Skinner</i> , 119 So. 3d 294 (Miss. 2013).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension without pay, public reprimand, fine & court costs	Justice	<p>Judge communicated with the sheriff's office during a criminal investigation at a time when there was no case pending before him; signed an order where there was no case pending before him and engaged in ex parte communications concerning the matter; non-adjudicated a minor in violation of Mississippi Code Annotated § 63-11-30(3), at the request of the minor and her father; engaged in ex parte communications with the minor and her father; failed to give notice to prosecuting authorities; and interfered in a case that was assigned to another justice court judge; reduced a defendant's bond which had been set by another justice court judge; dismissed eleven (11) cases of no proof of insurance in a four (4) month period after the respective defendants supplied proof of insurance that was obtained after the fact; improperly involved himself in a domestic civil matter; engaged in improper ex parte communications with a litigant involved in the domestic dispute; and improperly attempted to aid the litigant by asking an officer to assist the litigant.</p>
Suspension without pay, public reprimand, fine & court costs	Justice	<p>Judge executed a felony arrest warrant based on an affidavit submitted by the judge's own client.</p>
Suspension without pay, public reprimand, fine & court costs	Justice	<p>Judge engaged in "ticket-fixing" and had ex parte communications.</p>
Suspension without pay, public reprimand, fine & court costs	County	<p>Judge engaged in ex parte communications; misused his contempt power; failed to properly notice hearings; granted relief not requested; and issued a search warrant without legal authority.</p>
		<p><i>MCJP v. Thompson</i>, 80 So. 3d 86 (Miss. 2012).</p>
		<p><i>MCJP v. Bustin</i>, 71 So. 3d 598 (Miss. 2011).</p>
		<p><i>MCJP v. McKenzie</i>, 63 So. 3d 1219 (Miss. 2011).</p>
		<p><i>MCJP v. Patton</i>, 57 So. 3d 626 (Miss. 2011).</p>

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension without pay, public reprimand, fine & court costs	Justice	Judge touched a deputy clerk in an inappropriate manner and had in the past made inappropriate remarks.  <i>MCJP v. Brown</i> , 37 So. 3d 14 (Miss. 2010).
Suspension without pay, public reprimand, fine & court costs	Justice & Municipal	Judge, with deputies, went to the home of the complainant to inquire about missing sections of a fence that had been removed from a cemetery; judge subsequently ordered the complainant to return the fences or face prosecution; despite the fact that no charges were ever pending concerning the pieces of fence, the judge informed the complainant that a warrant had been issued for her arrest.  <i>MCJP v. Carr</i> , 990 So. 2d 763 (Miss. 2008) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Suspension without pay, public reprimand & court costs	Justice	Judge failed to properly adjudicate criminal matters assigned to him; engaged in ticket-fixing; and dismissed criminal charges against multiple defendants in exchange for simultaneous payments to a “drug fund” established and maintained by the police chief.  <i>MCJP v. Smith</i> , 109 So. 3d 95 (Miss. 2013).
Suspension without pay, public reprimand & court costs	Justice	Judge improperly attempted to contact a judge in another jurisdiction concerning a pending criminal matter involving a friend’s family member.  <i>MCJP v. Dearman</i> , 73 So. 3d 1140 (Miss. 2011).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension without pay, public reprimand & court costs	Justice	<p>Judge interfered with the prosecution of a case against a defendant who was charged with a crime against the judge's relative; interfered with the defendant's attempt to post bond; disrupted a Board of Supervisors' meeting to complain about the sheriff's actions relating to the defendant's bond, which caused a disturbance and an interruption of the Board of Supervisors' business; interfered with the defendant's attempts to hire legal counsel by discouraging attorneys from representing the defendant, thereby attempting to deny the defendant his constitutional right to counsel and to a fair criminal proceeding; and stated on the record in a proceeding in circuit court "my advice to them [a victim of a crime] would be do not use the court, handle it themselves."</p> <p>Judge was also accused of willful misconduct for "passing to the file" DUI charges based on written motions filed by the county prosecutor; these actions were allegedly in violation of Mississippi Code § 63-11-39 and § 99-15-26.</p> <p>However, the Mississippi Supreme Court found no sanctionable conduct and dismissed that count against the judge with prejudice.</p>
Suspension without pay, public reprimand & court costs	Justice	<p>Judge refused to sign a search warrant referencing an acquaintance's computer; ordered that the acquaintance's handcuffs and shackles be removed during her initial appearance; on a second charge against the acquaintance, the judge engaged in ex parte communications with the acquaintance's husband; attempted to have the acquaintance released from jail; and became emotionally upset when the acquaintance was brought before the judge.</p>

*MCJP v. McGee*,  
71 So. 3d 578  
(Miss. 2011).

*MCJP v. Cowart*,  
71 So. 3d 590  
(Miss. 2011).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension without pay, public reprimand & court costs	Justice	<p>Judge sua sponte reduced bonds and charges without proper motion; conditioned the reduction on church attendance; exceeded her authority by altering bonds after a defendant had been released on bond or had waived preliminary hearing, or after a preliminary hearing had been conducted; permitted others to create the impression that they were in a special position to influence her as a judge; initiated and invited ex parte communications; and presided at her nephew's initial appearance.</p> <p><i>MCJP v. Dearman</i>, 66 So. 3d 113 (Miss. 2011).</p>
Suspension without pay, public reprimand & court costs	Justice	<p>Judge had ex parte communications with a defendant and a police officer and improperly reduced a court fine.</p> <p><i>MCJP v. Boone</i>, 60 So. 3d 172 (Miss. 2011).</p>
Suspension without pay, public reprimand & court costs	Justice	<p>Judge waited to rule on certain criminal cases pending the outcome of an unrelated case in chancery court; obtained ex parte information by attending the chancery court proceeding; engaged in ex parte communications; held a defendant without bond for a non-capital offense; improperly reduced a defendant's bond; refused to reduce a defendant's bond based on ex parte information concerning threats made against the judge; and allowed testimony about the alleged threats during the defendant's hearing.</p> <p><i>MCJP v. Anderson</i>, 32 So. 3d 1180 (Miss. 2010).</p>
Suspension without pay, public reprimand & court costs	Justice	<p>Judge had a conflict of interest in a case and did not properly recuse himself from the proceedings; judge, who had been on the bench approximately 29 years, "had a fundamental lack of understanding of legal principles in connection with the recusal process."</p> <p><i>MCJP v. Hartzog</i>, 32 So. 3d 1188 (Miss. 2010).</p>
Suspension without pay, public reprimand & court costs	Justice	<p>Judge engaged in ex parte communications with a party and ruled in that party's favor; continued cases without a motion being made to do so by either party; dismissed a DUI case without allowing the prosecutor to call a witness; attempted to get cases assigned to another judge dismissed, among other instances of judicial misconduct.</p> <p><i>MCJP v. Bradford</i>, 18 So. 3d 251 (Miss. 2009).</p>

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension without pay, public reprimand & court costs	Justice	Judge engaged in ex parte communications with a party concerning a pending matter; offered legal advice to the party; & used his influence as a judge to advance the private interests of others. <i>MCJP v. Fowlkes</i> , 967 So. 2d 12 (Miss. 2007).
Suspension without pay, public reprimand & court costs	Justice	Judge did not allow a defendant in a trespass proceeding to present any evidence on his behalf; sua sponte issued a warrant for the re-arrest of a defendant who had posted bond set by the judge; sua sponte revoked a defendant's probation without following proper procedures; after finding a defendant not guilty of DUI 1 <sup>st</sup> , ordered the defendant not to drive for 2 years; improperly issued arrest warrants; improperly set aside court orders issued by another judge; and improperly amended a charge against a defendant. <i>MCJP v. Roberts</i> , 952 So. 2d 934 (Miss. 2007).
Suspension without pay, public reprimand & court costs	Justice	Judge interfered with a criminal prosecution by having the sheriff contact the arresting officer to have him not attend court on the trial date so that a DUI charge could be dismissed for failure to prosecute; such action was deemed the "epitome of judicial misconduct exhibiting moral turpitude." <i>MCJP v. Sanford</i> , 941 So. 2d 209 (Miss. 2006).
Suspension without pay, public reprimand & court costs	Justice	Judge repeatedly engaged in ex parte communications and set aside judgments. <i>MCJP v. Britton</i> , 936 So. 2d 898 (Miss. 2006).
Suspension without pay, public reprimand & court costs	Justice	Judge engaged in ex parte communications, remanded charges, and presided over a case where there was a conflict of interest. <i>MCJP v. Cowart</i> , 936 So. 2d 343 (Miss. 2005).
Suspension without pay, public reprimand & court costs	Justice	Judge failed to render timely decisions; failure to give notice to parties of court orders. <i>MCJP v. McPhail</i> , 874 So. 2d 441 (Miss. 2004).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension, public reprimand & court costs	Municipal	Judge “passed” numerous traffic tickets to the files without requiring the defendants to appear in court. <i>MCJP v. Gordon</i> , 955 So. 2d 300 (Miss. 2007).
Suspension, fine & public reprimand	Justice	Judge became involved in dispute between friend/distant relative & third party; wrote insufficient funds check; & failed to file reports of campaign contributions or expenditures as required by law. <i>MCJP v. Franklin</i> , 704 So. 2d 89 (Miss. 1997).
Suspension, fine & public reprimand	Justice	Judge ordered or allowed an alteration of court dockets, & he improperly purchased replevined property. <i>In re Mullen</i> , 530 So. 2d 175 (Miss. 1988).
Suspension without pay & court costs	County	While speaking to a political organization, the judge made a number of inflammatory, racial remarks which were not deemed to be protected political speech; judges are however permitted to speak at political gatherings on their own behalf while candidates for re-election. <i>MCJP v. Osborne</i> , 11 So. 3d 107 (Miss. 2009).
Suspension without pay & court costs	County	Judge intervened on behalf of a family member in a vehicle repossession & used his judicial office in a manner to impede a quick & peaceful resolution to the matter. <i>MCJP v. Osborne</i> , 977 So. 2d 314 (Miss. 2008).
Suspension & fine	Justice	Judge had jailer park his vehicle across from house of minor who had made allegations against judge in order to intimidate minor & her family, & judge interjected himself in a meeting between student & principal & used his position as judge to intimidate the student. <i>MCJP v. Bishop</i> , 761 So. 2d 195 (Miss. 2000).
Suspension & fine	Justice	Judge assaulted a litigant in the courtroom & used profane language at the defendant during the altercation. <i>MCJP v. Guest</i> , 717 So. 2d 325 (Miss. 1998).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Suspension & fine	Justice	Judge dismissed charges pursuant to ex parte communications with defendant and defendant's aunt; prior discipline of judge involved political activity & attempting to have another justice court judge dismiss a person's traffic violation.  <i>MCJP v. Peyton</i> , 645 So. 2d 954 (Miss. 1994) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Suspension & court costs	Justice	Judge conducted ex parte bond hearings; assigned his daughter as public defender; improperly set aside judgment.  <i>MCJP v. Peyton</i> , 812 So. 2d 204 (Miss. 2002).
Suspension	Youth	Judge granted ex parte order changing child custody.  <i>MCJP v. Perdue</i> , 853 So. 2d 85 (Miss. 2003).
Suspension (Interim)	Circuit	Judge engaged in ex parte communications; suspension pending resolution of formal complaints.  <i>MCJP v. Delaughter</i> , 35 So. 3d 1208 (Miss. 2008).
Suspension (Interim)	Justice	Judge had 2 pending felony indictments; suspension was pending resolution of the indictments.  <i>MCJP v. Hartzog</i> , 822 So. 2d 941 (Miss. 2002).
Suspension	Municipal	Judge pled guilty to felony in federal district court, & was convicted of alcohol-related misdemeanors; judge was suspended from office as municipal judge pro tempore as long as he served as mayor, which was analogous to removal.  <i>MCJP v. Thomas</i> , 549 So. 2d 962 (Miss. 1989).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>			
Public censure	Supreme	Judge conducted himself in a manner prejudicial to the administration of justice which brought the judicial office into disrepute.	<i>MCJP v. McRae</i> , 700 So. 2d 1331 (Miss. Const. Tribunal 1997).
Public censure	Justice	Judge remained active in a political party following his election to bench.	<i>MCJP v. Peyton</i> , 555 So. 2d 1036 (Miss. 1990).
Public reprimand, fine & court costs	Justice	Judge failed to give notice to a litigant that she would face an eviction and an increase in the amount of the judgment against her; granted unrequested relief; acted with ignorance or disregard of the law; entered an unsupported judgment which caused direct harm to the a litigant; and gave legal advice to a litigant.	<i>MCJP v. Roberts</i> , 227 So. 3d 938 (Miss. 2017).
Public reprimand, fine & court costs	Chancery	Judge abused his contempt powers, failed to recuse himself from contempt proceedings, and prevented those he charged with contempt from presenting any defense.	<i>MCJP v. Harris</i> , 131 So. 3d 1137 (Miss. 2013).
Public reprimand, fine & court costs	Circuit	Judge failed to disclose a conflict to the parties in a civil lawsuit and failed to rule on counsel's motion to recuse made after the conflict was discovered.	<i>MCJP v. Bowen</i> , 123 So. 3d 381 (Miss. 2013).
Public reprimand, fine & court costs	Municipal	Judge attempted to use his judicial office to advance the private interests of his tenant, and by extension, his own private financial interests as landlord. Judge was also impatient and discourteous and abused his contempt power when arguing with a probation officer.	<i>MCJP v. Fowlkes</i> , 121 So. 3d 904 (Miss. 2013).
Public reprimand, fine & court costs	Circuit	Judge was discourteous to two (2) attorneys, a bail bondsman, and a litigant appearing before him in court and wrongfully imposed contempt of court sanctions against the two (2) attorneys and the bail bondsman.	<i>MCJP v. Smith</i> , 78 So. 3d 889 (Miss. 2011).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand, fine & court costs	Youth	Judge wrongfully imposed criminal contempt of court sanctions against a party without affording her due process rights.  <i>MCJP v. Darby</i> , 75 So. 3d 1037 (Miss. 2011).
Public reprimand, fine & court costs	Justice	Judge engaged in ex parte communications; allowed the defendant's mother to enter a plea on behalf of her daughter; did not treat parties with courtesy; wrote a note on behalf of a party to her employer.  <i>MCJP v. Vess</i> , 10 So. 3d 486 (Miss. 2009).
Public reprimand, fine & court costs	Justice	Judge had unlawfully denied bond and entered court orders which exceeded the authority of the court. (Judge no longer in office at the time of the opinion).  <i>MCJP v. Boland</i> , 998 So. 2d 380 (Miss. 2008) <i>overruled by</i> <i>MCJP v. Osborne</i> , 11 So. 3d 107 (Miss. 2009).
Public reprimand, fine & court costs	Justice	Judge wrote checks in excess of \$330,000 from a closed account.  <i>MCJP v. Hartzog</i> , 904 So. 2d 981 (Miss. 2004) <i>overruled in part on</i> <i>other grounds by</i> <i>MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Public reprimand, fine & court costs	Justice	Judge improperly suspended fines in 13 cases and improperly suspended state assessments in 4 cases.  <i>MCJP v. Sheffield</i> , 883 So. 2d 546 (Miss. 2004).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand, fine & court costs	Municipal	Judge improperly set aside judgments entered by previous judge, without any notice or hearing.  <i>MCJP v. Gibson</i> , 883 So. 2d 1155 (Miss. 2004) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).  <i>MCJP v. Williams</i> , 880 So. 2d 343 (Miss. 2004).  <i>MCJP v. Gunter</i> , 797 So. 2d 988 (Miss. 2001).  <i>MCJP v. Warren</i> , 791 So. 2d 194 (Miss. 2001).  <i>MCJP v. Russell</i> , 724 So. 2d 873 & 691 So. 2d 929 (Miss. 1997).  <i>MCJP v. Boykin</i> , 763 So. 2d 872 (Miss. 2000).  <i>MCJP v. Jones</i> , 735 So. 2d 385 (Miss. 1999).
Public reprimand, fine & court costs	Justice	Judge improperly dismissed cases and dismissed speeding tickets.
Public reprimand, fine & court costs	Municipal	Judge improperly used his judicial office for benefit in private practice; showed improper demeanor towards litigants and court personnel.
Public reprimand, fine & court costs	Justice	Judge engaged in ex parte communications; dismissed tickets based on ex parte communications; failed to conduct hearings on court matters.
Public reprimand, fine & court costs	Circuit	Judge improperly released prisoners & engaged in ex parte communications.
Public reprimand & fine	Justice	Judge engaged in ticket fixing & in ex parte communications with defendants.
Public reprimand & fine	Justice	Judge reduced charges of DUI to disorderly conduct or DUI first offenses.

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand & fine	Circuit	Judge suspended sentence of former client & placed another inmate on probation after his conviction & sentence had been affirmed. <i>MCJP v. Sanders</i> , 708 So. 2d 866 (Miss. 1998).
Public reprimand & fine	Municipal	Judge pointed a loaded weapon at individuals who were believed to be trespassing on neighboring land; fired shots at tires of individuals' vehicle; & placed handcuffs on & temporarily detained individuals. <i>MCJP v. Whitten</i> , 687 So. 2d 744 (Miss. 1997).
Public reprimand & fine	Justice	Judge reduced 3 citations for DUI in violation of statute precluding such reductions; assessed fines in excess of statutory maximum in 6 criminal cases, failed to require affidavits in 4 criminal cases; issued orders without authority; & allowed cameras in courtroom. <i>MCJP v. Emmanuel</i> , 688 So. 2d 222 (Miss. 1997).
Public reprimand & fine	Municipal	Judge violated judicial canon requiring judge to resign his office when he became a candidate in general election for non-judicial office. <i>MCJP v. Haltom</i> , 681 So. 2d 1332 (Miss. 1996).
Public reprimand & fine	Justice	Judge dismissed numerous speeding & traffic tickets & engaged in ex parte communications. <i>MCJP v. Bowen</i> , 662 So. 2d 551 (Miss. 1995).
Public reprimand & fine	Justice	Judge altered final judgment on his own volition because of ex parte communications. <i>MCJP v. Underwood</i> , 644 So. 2d 458 (Miss. 1994).
Public reprimand & fine	Justice	Judge violated judicial canon requiring judge to resign his office when he became a candidate in general election for non-judicial office. <i>MCJP v. Ishee</i> , 627 So. 2d 283 (Miss. 1993).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand & fine	Justice	Judge engaged in ticket fixing & in ex parte communications concerning charges.  <i>MCJP v. Gunn</i> , 614 So. 2d 387 (Miss. 1993) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).  <i>In re Seal</i> , 585 So. 2d 741 (Miss. 1991).  <i>MCJP v. Cowart</i> , 566 So. 2d 1251 (Miss. 1990).  <i>In re Chambliss</i> , 516 So. 2d 506 (Miss. 1987).  <i>In re Hearn</i> , 515 So. 2d 1225 (Miss. 1987).  <i>In re Odom</i> , 444 So. 2d 835 (Miss. 1984).
Public reprimand & fine	Justice	Judge dismissed traffic offenses at request of persons with no prosecutorial responsibility; allowed clerical personnel to adjudicate criminal cases; & allowed traffic tickets to be adjudicated by highway patrol officers &/or court clerk or deputy clerk.
Public reprimand & fine	Justice	Judge improperly dismissed nonmoving violations; assessed excessive fees, charges, & costs; & failed to properly docket cases.
Public reprimand & fine	Justice	Judge interfered with administration of police officers; improperly questioned rape victim; failed to pay traffic fine; failed to properly register automobile; & publicly supported bond issue.
Public reprimand & fine	Justice	Judge had found defendants not guilty without a trial after being contacted by other officials; had unlawfully entered a JNOV; had interfered with the assignment of cases; had unlawfully handled bad check cases; and had improperly assessed constable fees.
Public reprimand & fine	Justice	Judge used criminal process or threat of criminal process to collect "bad checks"; failed to properly docket & process "bad check" cases on criminal or civil docket; failed to collect civil court costs in advance; failed to keep required records; & collected court costs from county for cases which were never docketed.

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand & fine	Justice	Judge failed to properly docket & use lawful procedure to collect on “bad check” claims. <i>In re Lambert</i> , 421 So. 2d 1023 (Miss. 1982).
Public reprimand & fine	Justice	Judge failed to use lawful procedure to collect on “bad check” claims. <i>In re Branan</i> , 419 So. 2d 145 (Miss. 1982).
Public reprimand & court costs	Municipal	Judge made improper statements on social media and in a newspaper interview; improperly ordered participants into a drug court program; and exhibited discourteous conduct in the courtroom. <i>MCJP v. Clinkscales</i> , 192 So. 3d 997 (Miss. 2016).
Public reprimand & court costs	Justice	Judge had ex parte communication with a defendant about his pending criminal case; failed to disclose such ex parte communication to the prosecutor; dismissed the charges against the defendant without a hearing and without any motion to dismiss by the prosecutor; and falsified court records. <i>MCJP v. Carver</i> , 107 So. 3d 964 (Miss. 2013).
Public reprimand & court costs	Chancery	Judge misused contempt powers by holding an attorney in criminal contempt of court for failing to say the Pledge of Allegiance in open court. <i>MCJP v. Littlejohn</i> , 62 So. 3d 968 (Miss. 2011).
Public reprimand & court costs	County	Judge repeatedly failed to issue orders in court proceedings. <i>MCJP v. Agin</i> , 17 So. 3d 578 (Miss. 2009).
Public reprimand & court costs	Municipal	Judge had presided over a legal proceeding concerning a defendant, i.e, had signed the warrant for his arrest, and then represented the defendant against the same criminal charges. <i>MCJP v. Pittman</i> , 993 So. 2d 816 (Miss. 2008).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>			
Public reprimand & court costs	Justice	Judge made a number of inappropriate and offensive remarks while attending a seminar in her capacity as a judge; her offensive remarks were not protected by the First Amendment. (Judge no longer in office at the time of the opinion).	<i>MCJP v. Boland</i> , 975 So. 2d 882 (Miss. 2008).
Public reprimand & court costs	County	Judge had failed repeatedly to issue rulings in cases pending before him.	<i>MCJP v. Agin</i> , 987 So. 2d 418 (Miss. 2008).
Public reprimand & court costs	Justice	Judge conducted ex parte communications with a party and ordered a stay of his own order; in another case, the judge failed to dispose of a pending case.	<i>MCJP v. Sutton</i> , 985 So. 2d 322 (Miss. 2008) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Public reprimand & court costs	Justice	Judge became involved in a court matter by attempting to talk to a fellow justice court judge about the court matter & subsequently told a justice court deputy clerk not to issue an arrest warrant, which had been signed by the other justice court judge.	<i>MCJP v. Thompson</i> , 972 So. 2d 582 (Miss. 2008) <i>overruled in part on other grounds by MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Public reprimand & court costs	Municipal	Judge received a DUI – 1 <sup>st</sup> Offense to which he pled guilty; judge payed the fine and complied with all sentencing conditions; judge also self-reported his charge to the MCJP.	<i>MCJP v. Westfaul</i> , 962 So. 2d 555 (Miss. 2007).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand & court costs	Justice	Judge reinstated his grandson's license and intervened on his behalf in a sentencing matter.  <i>MCJP v. Cole</i> , 932 So. 2d 9 (Miss. 2006) overruled in part on other grounds by <i>MCJP v. Boone</i> , 60 So. 3d 172 (Miss. 2011).
Public reprimand & court costs	Chancery	Judge failed to pay vendors for items purchased even after he was reimbursed for the purchases by the State.  <i>MCJP v. Teel</i> , 863 So. 2d 973 (Miss. 2004).
Public reprimand & court costs	Justice	Judge conducted ex parte communications about dismissal of charges.  <i>MCJP v. Blakeney</i> , 848 So. 2d 824 (Miss. 2003).
Public reprimand & court costs	Justice	Judge found a defendant guilty of the crime charged without giving her the opportunity to defend herself.  <i>MCJP v. Wells</i> , 794 So. 2d 1030 (Miss. 2001).
Public reprimand & court costs	Justice	Judge allowed media to videotape court proceedings.  <i>MCJP v. Carr</i> , 786 So. 2d 1055 (Miss. 2001).
Public reprimand & court costs	Justice	Judge dismissed charges & then reinstated them; exceeded jurisdiction of the court.  <i>MCJP v. Neal</i> , 774 So. 2d 414 (Miss. 2000).
Public reprimand & court costs	Municipal	Not stated.  <i>MCJP v. White</i> , 660 So. 2d 226 (Miss. 1995).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand & reinstatement	County	
Public reprimand	Chancery	Judge improperly filed 6 new complaints on behalf of clients after appointment to the bench.  Judge improperly issued subpoenas and admitted that he had failed to comply with the law.
Public reprimand	Justice	Judge refused to return handgun to a defendant who was not charged.
Public reprimand	Justice	Judge made ex parte communications about pending cases; remanded cases to the file which were assigned to another judge.
Public reprimand	Justice	Judge made ex parte contacts with another judge who was assigned to his son's DUI case; contacted arresting officer; & contacted that officer's supervisor.
Public reprimand	Circuit	Judge abused court's contempt powers, among other misconduct.
Public reprimand	Circuit	Judge abused court's contempt powers against circuit clerk, & unlawfully expunged felony convictions of 2 criminal defendants.
Public reprimand	Court of Appeals	Judge committed offense of DUI.

*MCJP v. Osborne*,  
876 So. 2d 324  
(Miss. 2004).

*MCJP v. Buffington*,  
55 So. 3d 167  
(Miss. 2011).

*MCJP v. Lewis*,  
830 So. 2d 1138  
(Miss. 2002).

*MCJP v. Lewis*,  
801 So. 2d 704  
(Miss. 2001).

*MCJP v. Brown*,  
761 So. 2d 182  
(Miss. 2000).

*MCJP v. Byers*,  
757 So. 2d 961  
(Miss. 2000).

*MCJP v. Sanders*,  
749 So. 2d 1062  
(Miss. 1999).

*MCJP v. Thomas*,  
722 So. 2d 629  
(Miss. 1998).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Public reprimand	Justice	Judge attempted to limit a litigant's rights to execute upon a judgment & then vacated the judgment without notice or hearing. <i>MCJP v. Fisher</i> , 706 So. 2d 1107 (Miss. 1998).
Public reprimand	Justice	Judge had ex parte communications with defendant, defendant's mother, arresting officer, & prosecuting attorney; judge interfered with a defendant's bonding process. <i>MCJP v. Vess</i> , 692 So. 2d 80 (Miss. 1997).
Public reprimand	Municipal	Judge incarcerated a defendant without notice or hearing; sentenced another defendant to more jail time than allowed by law; & found same defendant guilty of perjury based upon judge's own affidavit & warrant. <i>MCJP v. Fletcher</i> , 686 So. 2d 1075 (Miss. 1997).
Public reprimand	Not stated	Not stated. <i>MCJP v. Jenkins</i> , 677 So. 2d 171 (Miss. 1996).
Public reprimand	Justice	Judge notarized deed with a false acknowledgment & entered orders in cases not pending before judge's court. <i>MCJP v. Hartzog</i> , 646 So. 2d 1319 (Miss. 1994).
Public reprimand	Municipal	Judge set accused's bail while serving as municipal judge & thereafter sought to reduce bail while acting as practicing attorney representing accused. <i>MCJP v. Atkinson</i> , 645 So. 2d 1331 (Miss. 1994).
Public reprimand	Justice	Not stated. <i>MCJP v. Vess</i> , 637 So. 2d 882 (Miss. 1994).
Public reprimand	Justice	Judge failed to pay hospital account & issued arrest warrant in dispute between a car dealer and customer which was not properly before the court. <i>MCJP v. Cantrell</i> , 624 So. 2d 94 (Miss. 1993).

Judicial Sanctions Ordered by the Mississippi Supreme Court		
Public reprimand	Justice	Not stated.  <i>MCJP v. Riley</i> , 572 So. 2d 875 (Miss. 1990).
Public reprimand	Justice	Judge held an unsuccessful litigant in contempt of court.  <i>MCJP v. Walker</i> , 565 So. 2d 1117 (Miss. 1990).
Public reprimand	Justice	Judge had defendant in an eviction proceeding unlawfully jailed and in another proceeding, entered an order granting relief from a temporary restraining order which had been granted by another justice court judge.  <i>In re Bailey</i> , 541 So. 2d 1036 (Miss. 1989).
Public reprimand	Justice	Judge disrupted court proceedings; made accusations of impropriety against another judge & wildlife officers; & acted on behalf of a criminal defendant.  <i>In re Cooksey</i> , 515 So. 2d 957 (Miss. 1987).
Private reprimand	Justice	Judge improperly sentenced a defendant (sentence was the result of a plea bargain).  <i>MCJP v. T.T.</i> , 922 So. 2d 781 (Miss. 2006).
Private reprimand	Justice	Judge allowed a photograph to be taken during a court proceeding and had failed to wear a robe during a court proceeding.  <i>MCJP v. Blakeney</i> , 905 So. 2d 521 (Miss. 2004).
Private reprimand	Chancery	Judge had excessive delays in rendering opinions and orders in 6 cases before the court.  <i>MCJP v. U.U.</i> , 875 So. 2d 1083 (Miss. 2004).
Private reprimand	Justice	Judge's participation in drafting petition against law enforcement officer was willful misconduct.  <i>MCJP v. S.S.</i> , 834 So. 2d 31 (Miss. 2003).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>		
Private reprimand	Municipal	Judge ordered probationers to marry as a condition of probation, & set bond for his own client. <i>MCJP v. A Municipal Court Judge</i> , 755 So. 2d 1062 (Miss. 2000).
Private reprimand	Justice	Judge commented to clerk that clerk "checked out" all the men that came into the office & that clerk also "checked out" the judge. <i>MCJP v. R.R.</i> , 732 So. 2d 224 (Miss. 1999).
Private reprimand	Justice	Judge collected fines in lieu of court clerk & dismissed cases upon representations by offender without hearing the State's side. <i>MCJP v. A Justice Court Judge</i> , 580 So. 2d 1259 (Miss. 1991).
Private reprimand	Justice	Judge requested assistance for a person charged with a traffic violation in another court, but this was an isolated instance occurring shortly after election to his first term. <i>MCJP v. Peyton</i> , 555 So. 2d 1036 (Miss. 1990).
Private reprimand	Chancery	Judge called a litigant involved in an action pending before the judge & solicited his political support, but other mitigating circumstances existed. <i>In re Baker</i> , 535 So. 2d 47 (Miss. 1988).
Private admonishment	Justice	Judge was prohibited from serving as a justice court judge and a part-time police officer as this was a violation of the separation of powers, and he failed to issue garnishment writs even though he had collected the filing fees. <i>In re Anderson</i> , 447 So. 2d 1275 (Miss. 1984).

Judicial Sanctions Ordered by the Mississippi Supreme Court		
No sanction & dismissal of proceedings	Justice	<p>Judge was accused of willful misconduct for “passing to the file” sixteen (16) DUI charges based on written motions filed by the county prosecutor; these actions were allegedly in violation of Mississippi Code § 63-11-39.</p> <p>After reviewing the language in § 63-11-39, the Mississippi Supreme Court found that passing the DUI charges to the file was not in fact a reduction in the charges. Therefore, the Court held that the proposed sanctions were not warranted, and it dismissed the complaint against the judge with prejudice.</p>
No sanction & dismissal of proceedings	Justice	<p>Judge improperly denied bond to a criminal defendant but her actions did not show a willful desire to disregard the state constitution.</p>
No sanction & dismissal of proceedings	Justice	<p>Judge may exercise his or her protected free speech rights, under certain circumstances, without violating the Code of Judicial Conduct.</p>
Dismissal of interim suspension because suspension was moot as judge had resigned from office	Justice	<p>An order for interim suspension had been granted by the Supreme Court; the judge and the commission entered into a memorandum of understanding and sought the interim suspension to be vacated; the Supreme Court denied the motion; the judge resigned from office; on rehearing, the Supreme Court held that a memorandum of understanding is not an allowed disposition if misconduct has been found.</p> <p><b>Note:</b> The Supreme Court is in the process of amending Rule 6(b) of the Rules of the Commission on Judicial Performance. <i>Mississippi Comm’n on Jud. Perf. v. Martin</i>, 995 So. 2d 727, 730 (Miss. 2008).</p>

*MCJP v. Little*,  
72 So. 3d 501  
(Miss. 2011).

*MCJP v. Martin*,  
921 So. 2d 1258  
(Miss. 2005).

*MCJP v. Wilkerson*,  
876 So. 2d 1006  
(Miss. 2004).

*MCJP v. Martin*,  
995 So. 2d 727  
(Miss. 2008).

<b>Judicial Sanctions Ordered by the Mississippi Supreme Court</b>			
Dismissal of interim suspension because judge complied with judicial education requirements	Justice	Judge, who had failed to attend annual training by the Mississippi Judicial College, was suspended pending his compliance with the mandatory judicial education training requirements.	<i>In re Cadle</i> , 466 So. 2d 79 (Miss. 1985).
Commission recommendation affirmed by the Mississippi Supreme Court	Municipal	Mississippi Supreme Court affirmed the recommendation of the Commission on Judicial Performance that municipal court judges should be suspended from serving as judges as long as they are either mayor or mayor pro tempore of their respective municipalities, as this creates an unavoidable conflict of interest in holding the dual offices of mayor and municipal judge.	<i>In re Grant</i> , 631 So. 2d 758 (Miss. 1994).
Agreed Statement of Facts and Recommendations approved by Supreme Court	Circuit	Judge, who had resigned from office, joined with the Commission in an Agreed Statement of Facts and Recommendations filed with the Supreme Court; if judge violated agreement, he would be subject to removal.	<i>In re Maples</i> , 611 So. 2d 211 (Miss. 1992).

whose identity should have been included in the notice under this rule, the party shall promptly notify the other party or the other party's attorney of the name and address of such additional witness.

(2) Effect of Failure to Comply. If there is a failure to comply with the requirements of subsection (b)(1), the court may use such sanctions as it deems eluding:

- (A) Granting a continuance and/or assessing costs against the appropriate attorney or party;
- (B) Limiting further discovery of the party failing to comply;
- (C) Finding the attorney failing to comply in contempt; or
- (D) Excluding the testimony of appropriate witnesses.

(c) Exceptions. For good cause shown, the court may grant an exception to the requirements of sections (a) and (b).

### **Trial Proceedings**

The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. *Illinois v. Allen*, 397 U.S. 337, 343, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970).

### **Witnesses**

#### **Mississippi Rule of Civil Procedure 45:**

Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

### **Sequestration Rule**

#### **Mississippi Rule of Evidence 615:**

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney; or
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense.

**Advisory Committee Note:**

This rule does not discuss sanctions for violation of the sequestration order. Under existing Mississippi law the court has the discretion to exclude the offending witness from testifying. *See Johnson v. State*, 346 So. 2d 927 (Miss. 1977). The trial judge should not permit a witness who has violated the rule to testify unless he has first determined that the adversary would not be prejudiced by the violation of the rule. Other available remedies might be to strike the testimony of a witness who violated the rule, cite the witness for contempt, or allow a “full-bore” cross-examination. *See Douglas v. State*, 525 So. 2d 1312 (Miss. 1988).

During the course of the trial, the witness Charles Coleman, who had apparently been subpoenaed by the State and who had been in the courtroom during the testimony of previous witnesses, was offered as a witness in the case-in-chief for the State. Gerrard objected, saying first that the witness had not been disclosed to the defense, and, second, that sequestration had been violated. The State announced that it would withdraw Coleman as a witness. Thereafter, Coleman sat in the courtroom for the remainder of the trial. After the defense had rested, the State announced that it would call Coleman as a rebuttal witness. This too brought an objection by the defense. . . . When the defense objected to Coleman's testimony as being in violation of the Rule, the parties went into chambers. . . . The prosecutor felt that Coleman deserved an opportunity to respond to Gerrard's statements. The defense objected, stating that the prosecutor knew Gerrard would so testify because he had said it before. The trial judge then asked defense counsel to state specifically from where these statements appeared. Defense counsel did not answer. The trial judge then stated that he would allow the prosecution to ask only two questions, the content of which was established in chambers, and further stated that the defense would have wide open cross-examination. The defense at no time proffered how asking these two questions prejudiced their case. Since the trial court followed our rule and Comments thereto, there was no abuse of discretion. The trial court allowed the prosecution to ask only two questions, of which the content was limited. The defense declined cross-examination. This matter was properly within the discretion of the trial judge, and he conducted the proceedings in accordance with the standards set forth by this Court. . . . *Gerrard v. State*, 619 So. 2d 212, 217-18 (Miss. 1993).

**Contempt of Court for Failure to Pay Fines**

**2018 House Bill 387** provides:

(1) Incarceration shall not automatically follow the nonpayment of a fine, restitution or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant was not indigent or could have made payment but refused to do so. When determining whether a person is indigent, the court shall use the current Federal Poverty Guidelines and there shall be a presumption of indigence when a defendant's income is at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, subject to a review of his or her assets. A defendant at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines without substantial liquid assets available to pay fines, fees, and costs shall be deemed indigent. In determining whether a defendant has substantial liquid assets, the judge shall not consider up to Ten Thousand Dollars (\$10,000.00) in tangible personal property, including motor vehicles, household goods, or any other assets exempted from seizure under execution or attachment as provided under Section 85–3–1. If the defendant is above one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, the judge shall make an individualized assessment of his or her ability to pay based on the totality of the circumstances including, but not limited to, the defendant's disposable income, financial obligations and liquid assets. If the judge determines that a defendant who claims indigence is not indigent and the defendant could have made payment but refused to do so, the case file shall include a written explanation of the basis for the determination of the judge. In justice and municipal court, such finding shall be included in the court's order.

(2) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order that allows the defendant additional time for payment, reduces the amount of each installment, revokes the fine, in whole or in part, or allows the defendant to perform community service at the state minimum wage per hour rate. If the court finds nonpayment is willful after consideration of the defendant's situation, means, and conduct with regard to the nonpayment, the court shall determine the period of incarceration, if any, subject to the limitations set by law and subsection (3) of this section.

(3) If at the time the fine, restitution or court cost is ordered, a sentence of incarceration is also imposed, the aggregate total of the period of incarceration imposed pursuant to this section and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense. . .

**§ 99-19-20 Fines; payment; indigent defendants; inability to work or unavailability of work:**

(1) Except as otherwise provided under Section 1 of [H.B. 387], when any court sentences a defendant to pay a fine, the court may order

- (a) that the fine be paid immediately, or
- (b) that the fine be paid in installments to the clerk of the court or to the judge, if there be no clerk, or
- (c) that payment of the fine be a condition of probation, or
- (d) that the defendant be required to work on public property for public benefit under the direction of the sheriff for a specific number of hours, or
- (e) any combination of the above.

(2) Except as otherwise provided under Section 1 of this act, the defendant may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds, subject to the limitations provided under this section. The defendant shall not be imprisoned if the defendant is financially unable to pay a fine and so states to the court in writing, under oath, after sentence is pronounced, and the court so finds, except if the defendant is financially unable to pay a fine and such defendant failed or refused to comply with a prior sentence as specified in subsection (1) of this section, the defendant may be imprisoned. This subsection shall be limited as follows:

- (a) In no event shall such period of imprisonment exceed one (1) day for each One Hundred Dollars (\$100.00) of the fine.
- (b) If a sentence of imprisonment, as well as a fine, were imposed, the aggregate of such term for nonpayment of a fine and the original sentence of imprisonment shall not exceed the maximum authorized term of imprisonment.
- (c) It shall be in the discretion of the judge to determine the rate of the credit to be earned for work performed under subsection (1)(d), but the rate shall be no lower than the rate of the highest current federal minimum wage.

(3) Periods of confinement imposed for nonpayment of two (2) or more fines shall run consecutively unless specified by the court to run concurrently.

We now hold that when a circuit court makes release from prison contingent upon payment of a fine, it is mandatory that the circuit court follow the statutory requirement of Miss. Code Ann. § 99-19-20(2). The court must make an inquiry as to whether the convicted defendant is in fact

able to pay the fine, and make a finding on this question. *Jones v. State*, 564 So. 2d 848, 851 (Miss. 1990) (discussing prior version of statute).

To begin with, it is established beyond per adventure that an indigent may not be incarcerated because he is financially unable to comply with an otherwise lawfully imposed sentence of a fine. So long as Cassibry is “financially unable to pay a fine” and the trial court so finds, he may not be imprisoned, period. *Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984) (citations omitted) (discussing prior version of statute).

Section 99-19-20(1)(d) authorizes the trial judge to require that Cassibry perform public service. Considering the present state of things, the trial judge may well want to employ this alternative and allow Cassibry to begin to work off his fine. Section 99-19-20(2)(c) provides that he would receive credit against his fine for any such public service work at the rate of the highest current federal minimum wage. Another alternative available to the trial judge at this time is the establishment of a realistic installment plan for the payment of the fine. Accepting the fact that Cassibry is financially unable to pay the \$45,000.00 at this time, the trial judge would be well within the scope of the discretionary authority vested in him by statute if he required that Cassibry pay what he reasonably could at reasonable, periodic intervals. *Cassibry v. State*, 453 So. 2d 1298, 1299-300 (Miss. 1984) (citations omitted) (discussing prior version of statute).

**§ 99-37-7 Contempt for default:**

(1) Subject to the provisions of Section 1 of [H.B. 387], when a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Subject to the provisions of Section 1 of this act, unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

(3) A judicial officer shall not be held criminally or civilly liable for failure of any defendant to pay any fine or to make restitution if the officer exercises his judicial authority in accordance with subsections (1) and (2) of this section to require the payment of such fine or restitution.

(4) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

**Completion of Limitations**

**§ 15-1-3 Completion of period of limitation:**

(1) The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy. . . .

**Concealment**

**§ 15-1-67 Fraudulent concealment of claim:**

If a person liable to any personal action shall fraudulently conceal the cause of action from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence might have been, first known or discovered.

**Construction Contracts and Works**

**§ 31-3-23 Appeals and remedies:**

Within ten (10) days after any order, judgment or action of the board, any person aggrieved thereby may appeal such order, judgment or action either to the chancery court of the county wherein the appellant resides or to the Chancery Court of the First Judicial District of Hinds County, Mississippi. . . .

**§ 85-7-189 Suit on bond; commencement:**

(1) Suit on a performance claim by an obligee on a bond given in accordance with this chapter shall be commenced as follows:

(a) If the obligee is the owner of the project being constructed, such obligee shall bring suit within one (1) year after the earlier of final completion or actual use or occupancy of the project for its intended purpose; or

(b) If the obligee is other than an owner of the project being constructed, such obligee shall bring suit within one (1) year after such obligee receives final payment with respect to the project.

(2) When suit is instituted on a claim for payment on a payment bond given in accordance with this chapter, it shall be commenced within one (1) year after the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action and not later. . . .

**§ 15-1-41      Actions arising from construction deficiencies:**

No action may be brought to recover damages for injury to property, real or personal, or for an injury to the person, arising out of any deficiency in the design, planning, supervision or observation of construction, or construction of an improvement to real property, and no action may be brought for contribution or indemnity for damages sustained on account of such injury except by prior written agreement providing for such contribution or indemnity, against any person, firm or corporation performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property more than six (6) years after the written acceptance or actual occupancy or use, whichever occurs first, of such improvement by the owner thereof. This limitation shall apply to actions against persons, firms and corporations performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property for the State of Mississippi or any agency, department, institution or political subdivision thereof as well as for any private or nongovernmental entity. This limitation shall not apply to any person, firm or corporation in actual possession and control as owner, tenant or otherwise of the improvement at the time the defective and unsafe condition of such improvement causes injury. This limitation shall not apply to actions for wrongful death.

**Criminal Procedure**

**§ 99-1-5      Limitations; exceptions:**

The passage of time shall never bar prosecution against any person for the offenses of murder, manslaughter, aggravated assault, aggravated domestic violence, kidnapping, arson, burglary, forgery, counterfeiting, robbery, larceny, rape, embezzlement, obtaining money or property under false pretenses or by fraud, felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, sexual battery of a child as described in Section 97-3-95(1)(c), (d) or (2), exploitation of children as described in Section 97-5-33, promoting prostitution under Section 97-29-51(2) when the person involved is a minor, or for any human trafficking offense described in Section 97-3-54.1(1)(a), (1)(b) or (1)(c), Section 97-3-54.2, or Section 93-3-54.3. A person shall not be prosecuted for conspiracy, as described in Section 97-1-1, for felonious assistance-program fraud, as described in Section 97-19-71, or for felonious abuse of vulnerable persons, as described in Sections 43-47-18 and 43-47-19, unless the prosecution for the offense is commenced within five (5) years next after the commission thereof. A person shall not be prosecuted for larceny of timber as described in Section 97-17-59, unless the prosecution for the offense is commenced within six (6) years next after the commission thereof. A person shall not be prosecuted for any other offense not listed in this section unless the

prosecution for the offense is commenced within two (2) years next after the commission thereof. Nothing contained in this section shall bar any prosecution against any person who shall abscond or flee from justice, or shall absent himself from this state or out of the jurisdiction of the court, or so conduct himself that he cannot be found by the officers of the law, or that process cannot be served upon him.

**§ 99-1-9      Limitations; additional year permitted:**

When an indictment shall be lost or destroyed, or quashed or abated, or the judgment thereon arrested or reversed for any defect therein or in the record, or for any matter of form or other cause, not being an acquittal on the merits, the further time of one year from the time when such indictment shall be lost, destroyed, quashed or abated, or the judgment thereon arrested or reversed, shall be allowed for the finding of a new indictment.

**§ 99-17-1      Trial within 270 days of arraignment:**

Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned.

**§ 99-39-5      Post-Conviction Collateral Relief: Motion for relief; grounds; limitations:**

(2) A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the petitioner can demonstrate either:

- (a) (i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence; or
- (ii) That, even if the petitioner pled guilty or nolo contendere, or confessed or admitted to a crime, there exists biological evidence not tested, or, if previously tested, that can be subjected to additional DNA testing that would provide a reasonable likelihood

of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution.

(b) Likewise excepted are those cases in which the petitioner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked. Likewise excepted are filings for post-conviction relief in capital cases which shall be made within one (1) year after conviction.

***See Rowland v. State, 42 So. 3d 503, 507 (Miss. 2010) (holding errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA).***

### **Death of Party**

#### **§ 15-1-55      Death of person before expiration of period of limitation:**

If a person entitled to bring any of the personal actions herein mentioned, or liable to any such action, shall die before the expiration of the time herein limited therefor, such action may be commenced by or against the executor or administrator of the deceased person, after the expiration of said time, and within one year after the death of such person.

### **Disability of Infancy or Unsoundness of Mind**

#### **§ 15-1-59      Person under disability of infancy or unsoundness of mind:**

If any person entitled to bring any of the personal actions mentioned shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the actions within the times in this chapter respectively limited, after his disability shall be removed as provided by law. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

#### **§ 15-1-53      Actions against a trustee:**

When the legal title to property or a right in action is in an executor, administrator, guardian, or other trustee, the time during which any statute of limitations runs against such trustee shall be computed against the person beneficially interested in such property or right in action, although such person may be under disability and within the saving of any statute of limitations; and may be availed of in any suit or actions by such person.

Taxes

Corporation Franchise Tax

**§ 27-13-49 Limitation of actions; examination period; revisions:**

(1) Returns shall be examined by the commissioner or his duly authorized agents within three (3) years from the due date or the date the return was filed, whichever is later, and no determination of a tax overpayment or deficiency shall be made by the commissioner after the expiration of the three-year period except as provided in this section.

Gas (Liquified, Compressed) Tax

**§ 27-59-25 Maintenance of distributor records:**

All actions by the state for the recovery of additional amounts claimed as tax due under this chapter must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided that in the case of fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time.

Gas (Natural) Tax

**§ 27-25-717 Time of payment:**

Provided, however, the statute of limitations for examining returns or to recover taxes and interest on funds held in escrow on price increases shall be three (3) years from the time the tax and interest is withdrawn from the State Depository for distribution to the State Treasury and to the county or counties in which the gas was produced.

Gasoline and Motor Fuel Tax

**§ 27-55-37 Maintenance of gasoline transaction records:**

All actions by the state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided, that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time.

## Income Tax

### **§ 27-7-49 Returns to be examined:**

(1) Returns shall be examined by the commissioner or his or her duly authorized agents within three (3) years from the due date or the date the return was filed, whichever is later, and no determination of a tax overpayment or deficiency shall be made by the commissioner after the expiration of the three-year period, except as provided in this section and as provided in Section 27-7-307. . . .

(5) Where the reported taxable income of a taxpayer has been increased or decreased by the Internal Revenue Service, the three-year examination period provided in subsection (1) of this section shall not be applicable, insofar as the Mississippi income tax liability is affected by the specific changes made by said Internal Revenue Service. However, no additional assessment or no refund shall be made under the provisions of this article after three (3) years from the date the Internal Revenue Service disposes of the tax liability in question.

(6) Where the reportable taxable income of a taxpayer has been decreased by the carryback of a net casualty loss deduction under Section 27-7-20 or the carryback of a net operating loss deduction under Section 27-7-17, the three-year examination period provided under subsection (1) of this section shall not be applicable insofar as the Mississippi income tax liability is affected by the carryback of the net casualty loss deduction or the carryback of the net operating loss deduction.

## Oil (Lubricating) Tax

### **§ 27-57-25 Maintenance of distributor records:**

All actions by the state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided, that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time.

## Refunds

### **§ 27-73-5 Statute of limitations:**

Except as otherwise provided in Sections 27-7-49, 27-13-49 and 27-65-42, all suits by any taxpayer for the recovery of any privilege, income,

franchise, or other excise tax, and all applications or proceedings for any refund or credit of these taxes shall be filed or made within three (3) years next after the return was filed, or from the date the assessment of the tax was made, or from the date the tax was paid, as the case may be, whichever is the earlier, and no recovery of taxes under any such suit shall be had and no refund of taxes shall be made unless the suit or application was filed within the period of limitation. However, as to income taxes the three-year statute of limitations shall be extended to six (6) years in cases where the reported net income of a taxpayer has been reduced by the Internal Revenue Service for any taxable period.

### **Property Tax**

#### **§ 27-3-41      Restriction:**

The power of the Commissioner of Revenue to institute proceedings for the assessment of property which has escaped taxation by reason of not being assessed shall expire at the end of seven (7) years from the date when his right so to do first accrued, and it shall bring all suits he is authorized to bring within six (6) years after the cause of action accrues and not thereafter.

### **Sales Tax**

#### **§ 27-65-42      Time for collection proceeding:**

(1) The amount of taxes due on any return which has been filed as required by this chapter shall be determined and assessed within thirty-six (36) months from the date the return was filed except as otherwise provided in this section and Section 27-65-55.

(2) When an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified of the examination, either by certified mail or personal delivery by an agent of the commissioner, within the thirty-six-month examination period provided for in subsection (1) of this section, the determination of the correct tax liability shall be made by the commissioner within one (1) year after the expiration of the thirty-six-month examination period; however, this limitation shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine, and assess at any time

the estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this chapter, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) A taxpayer may apply to the commissioner for revision of the tax assessed against him or her, or paid by him or her, at any time within thirty-six (36) months from the date of the assessment or from the date the return was filed. Unless a claim for credit or refund is filed by the taxpayer within thirty-six (36) months from the time the return was filed or assessment made, no credit or refund shall be allowed.

(4) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide documentation for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

### **Trespass**

#### **§ 95-5-29      Limitations; preclusive effect:**

An action for the remedies and penalties provided by § 95-5-10 may be prosecuted in any court of competent jurisdiction within twenty-four (24) months from the time the injury was committed and not after. All other actions for any specific penalty given by this chapter may be prosecuted in any court of competent jurisdiction within twelve (12) months from the time the injury was committed, and not after; and a recovery of any penalty herein given shall not be a bar to any action for further damages, or to any criminal prosecution for any such offense as herein enumerated.

## **CHAPTER 18**

### **ADOPTION**

#### **Adoption Authorized by Statute**

#### **§ 93-17-3 Jurisdiction; venue; petition; certificate of mental and physical condition of child; change of name; home study:**

(1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

(b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;

(c) The agency that placed the minor for adoption is licensed in this state and it is in the best interest of the minor that a court of this state assume jurisdiction because:

(i) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state; and

(ii) There is available in this state substantial evidence concerning the minor's present or future care;

(d) The minor and the prospective adoptive parent are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected;

(e) It appears that no other state would have jurisdiction under

prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction; or

(f) The child has been adopted in a foreign country, the agency that placed the minor for adoption is licensed in this state, and it is in the best interest of the child to be readopted in a court of this state having jurisdiction.

(2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.

(3) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(a) The court of this state finds that the court of the state which issued the decree or order:

(i) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or has declined to assume jurisdiction to modify the decree or order; or

(ii) Does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (1)(a) through (d) or has declined to assume jurisdiction over a proceeding for adoption; and

(b) The court of this state has jurisdiction over the proceeding.

We hold that chancery courts have exclusive jurisdiction over adoptions. . . . *Mississippi Dep't of Human Servs. v. Watts*, 116 So. 3d 1056, 1061 (Miss. 2012).

process shall be served as provided in § 93-13-281, unless joined in by that person or those persons prescribed in that section. Upon the return day of the process, the chancellor, if in vacation, or the court, if in termtime, shall cause the applicant to appear in person and then and there examine the applicant and all interested parties, and if, after the examination, the chancellor in vacation or the court in termtime is of the opinion that the applicant is incompetent to manage his or her estate, then it shall be the duty of the court to appoint a guardian of the estate of the applicant; however, in no instance shall the court have authority to appoint a guardian under the provisions of this section unless it examines the applicant in person and finds after the examination that the applicant is incompetent to manage his or her estate. A guardian appointed under the provisions of this section shall be required to make and file annual accounts of his acts and doings as in case of guardians for persons with mental illness.

### **Person of Unsound Mind**

#### **§ 93-13-125 Certain mentally incapable residents, appointment:**

The chancery court of any county in which may be situated the property or any part thereof, or debt due to, or right of action of any citizens of this state who have not been adjudged to be of unsound mind, or may have been so adjudged in proceedings which did not fully comply with the law in effect at the time of such adjudication, may appoint guardians of the estates of such persons, provided such persons:

- (1) have been continuously confined in a mental hospital operated by the State of Mississippi or by the United States government within the State of Mississippi for a period of more than one year and are still so confined,
- (2) are of unsound mind,
- (3) are mentally incapable of taking care of their estates, and
- (4) are incapable of responding to process.

Such appointment may be made upon the sworn petition of a relative or friend of such person or upon the petition of any other interested party and if there is attached to such petition a certificate of the director of the hospital in which such person is confined showing the existence of the conditions hereinabove prescribed, no process upon such person or further proof of incompetency shall be required. If at any time it be made to appear to the satisfaction of the court that such person has been restored to sanity, such guardianship may be terminated and ended as now provided by law.

***See § 93-13-123 Nonresidents of unsound mind, appointment.***

**Habitual Drunkard & Drug Addict**

**§ 93-13-131 Drug users, appointment of guardians:**

The chancery court of the county in which an habitual drunkard, habitual user of cocaine, opium or morphine resides may appoint a guardian to him on the application of a relative or friend. When an application for appointment of a guardian is presented, if the court is satisfied there is probable grounds for the appointment, it shall direct a writ to the sheriff, commanding him to summon the person alleged to be an habitual drunkard, habitual user of cocaine, or opium or morphine. On return of the summons executed, the court shall examine the question and determine whether the person is an habitual drunkard, habitual user of cocaine, opium or morphine, and for that purpose may summon and hear witnesses, orally or by deposition, and hear the parties and their evidence. If the court is satisfied that the person is an habitual drunkard, habitual user of cocaine, opium or morphine, it shall appoint a guardian to take care of him and his estate, both real and personal, and the costs of the inquisition shall be paid out of the estate. And the court or chancellor may direct the confinement of any person adjudged to be an habitual drunkard, habitual user of cocaine, or opium or morphine, in a facility that treats alcohol or substance abuse.

**Convict in the Penitentiary**

**§ 93-13-135 Convict, appointment of guardian:**

(1) When any offender shall be sentenced to the Penitentiary for a year or longer, the chancery court of the county of his residence, or where any of his property may be, may appoint a guardian, who shall take charge of the real and personal estate of the offender. The guardianship shall cease when the term of imprisonment shall expire or the offender dies; and so much of the estate of the offender as may be then in the hands of his guardian, shall be restored to him, or his legal representatives in case of his death, the guardian having such reasonable allowance therefrom for his services as the court may deem proper.

(2) A chancery court of the county of residence of an offender who is a resident of Mississippi may appoint a guardian to make health-care decisions for the offender. Process shall be served as provided in Section 93-13-281, unless joined in by that person or those persons prescribed in that section. The health-care guardianship shall cease when the offender's term of imprisonment expires or the offender dies. A guardian appointed under this subsection shall make and file annual accounts of the health-care decisions made on behalf of the offender.

## CHAPTER 31

### RESTRAINING ORDERS & INJUNCTIVE RELIEF

#### Authority to Grant Injunctions

**Mississippi Rule Civil Procedure 65, Injunctions** states:

(e) Jurisdiction Unaffected. Injunctive powers heretofore vested in the chancery courts remain unchanged by this rule.

While it is true that Rule 65(e) of the Mississippi Rules of Civil Procedure provides that the previously bestowed injunctive powers of the circuit and chancery courts are unchanged by Rule 65, it is a historical fact that the basis for equity jurisdiction of a suit for an injunction is the inadequacy of a remedy in circuit court. *Union National Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1181 (Miss. 2004) (citations omitted).

**§ 11-13-1 Complainant's equity, truthful allegations required:**

An injunction shall not be granted unless the judge or chancellor shall be satisfied of the complainant's equity and of the truth of the allegations of the bill, by oath or other means.

#### Preliminary Injunction

**Mississippi Rule Civil Procedure 65, Injunctions** states:

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing on application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon a trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

Rule 65 authorizes parties to seek temporary restraining orders (TROs) and preliminary injunctions in civil cases in which permanent injunctive relief or other relief is being sought. A party may move for, and in appropriate circumstances, obtain a TRO and/or a preliminary injunction before the merits of the case are resolved. Generally, the purpose of a TRO is to provide temporary short term relief until further action can be taken in the case. To obtain a TRO without notice to the adverse party, the party seeking relief must show, by affidavit or verified complaint, that it will suffer immediate and irreparable injury before the adverse party can be heard in opposition. In addition, the attorney for the party seeking the TRO must certify to the court in writing the efforts made to give the adverse party notice and the reasons why the notice to the adverse party should not be required. If a TRO is granted without notice, it must contain the information required by Rule 65(b) and it must expire by its terms, not more than 10 days after its entry, except in domestic relations cases. Before its expiration, a TRO may be extended by the court for a like period if the restrained party consents or the court extends the TRO for good cause shown. The purpose of a preliminary injunction is to provide injunctive relief until the merits of the case are resolved. Preliminary injunctions cannot be granted without notice. A party moving for preliminary injunctive relief pursuant to Rule 65(a) must demonstrate that “(i) there exists a substantial likelihood that the [movant] will prevail on the merits; (ii) the injunction is necessary to prevent irreparable harm; (iii) the threatened injury to the [movant] outweighs the harm an injunction might do to the [opposing party]; and (iv) granting a preliminary injunction is consistent with the public interest.” Motions for preliminary injunctions are within the trial court's discretion. *Advisory Committee Notes (citations omitted).*

An application for a preliminary injunction is a matter committed to the Chancery Court's sound discretion. Following other jurisdictions, we have accepted that the court considering such an application must weigh and balance an assortment of equities and, in the end, make at least four findings, to wit:

- (1) There exists a substantial likelihood that plaintiff will prevail on the merits;
- (2) The injunction is necessary to prevent irreparable injury;
- (3) Threatened injury to the plaintiffs outweighs the harm an injunction might do to the defendants; and
- (4) Entry of a preliminary injunction is consistent with the public interest.

*City of Durant v. Humphreys County Memorial Hosp.*, 587 So. 2d 244, 250 (Miss. 1991) (citations omitted).